

**CITY OF GOODYEAR
CITY COUNCIL ACTION FORM**

SUBJECT: Council authorize the City Manager to enter into a Purchase Agreement for the purchase of approximately 100 acres of real property generally located south of the southwest corner of Estrella Parkway and Van Buren Street

STAFF PRESENTER: Kevin Kugler
COMPANY
CONTACT: Ralph Pew, Pew & Lake, PC

RECOMMENDATION:

Council authorize the City Manager to enter into a Purchase Agreement for the purpose of acquiring approximately 100 acres of real property located south of the southwest corner of Estrella Parkway and Van Buren Street to provide for urban park space near the City Center site.

COMMUNITY BENEFIT:

Compliance with newly adopted General Plan Map and supporting policies to maintain and expand City of Goodyear parks and recreation level of service to meet the diverse needs of Goodyear residents.

Acquisition of property in close proximity to the future City Center site will compliment Goodyear's urban center with park, community gathering, recreation and open space opportunities.

DISCUSSION:

As Council is aware, staff has been in discussions with Mr. Ralph Pew and Lula Mae Hudson regarding the acquisition of approximately a 100 acre portion of her property located at the southwest corner of Estrella Parkway and Van Buren Street.

Council has given staff direction to proceed forward with the acquisition of property in this area that will benefit and support the development of park, community service and/or recreational amenities to serve the diverse needs of the citizens of Goodyear.

City acquisition of this property has been openly and actively discussed through the General Plan Advisory Committee (GPAC) process and has been much-anticipated for some time. In fact, the General Plan Land Use Map expressly identifies this property as park and open space. The balance of Ms. Hudson's property will be comprised of multi-family and general commercial land uses at the immediate southwest corner of Estrella Parkway and Van Buren Street. Please see the newly adopted General Plan for further reference.

The provisions and terms of the Purchase Agreement may be referenced in the attached Purchase Agreement. In summary, the sales price has been agreed at \$45,000 per acre and

will be fully payable at the close of escrow which is anticipated to take about 45 days. Staff considers the purchase price to be fair and generally below appraised value for properties in this area based upon recent sales activity in the area. City funding for this acquisition is in the current CIP for \$4.2 million from the sale of General Obligation bonds from July 2002 and November 2003. The remaining \$300,000 is to be provided from the contingency fund. The City intends that the property will be used for city/public park or for other governmental functions (but does not preclude other uses) and there are no naming rights or other deed restrictions binding or limiting future use of this property in this agreement.

Should Council authorize the City Manager to proceed, an escrow account will be opened and the property formally surveyed. Staff recommends that the land use master planning of this property be done as a part of the upcoming City Center master planning effort to provide design continuity with the yet-to-be-defined surrounding land uses.

FISCAL IMPACT:

The agreement provides a purchase price of \$45,000 per acre. The City is responsible for surveying the property and payment of escrow fees and closing costs. City funding sources have been reserved and are available for payment upon the close of escrow.

REVIEWED BY:



Grant Anderson – Deputy City Manager



Jim Oeser – City Attorney



Larry Price – Finance Director



Stephen Cleveland – City Manager

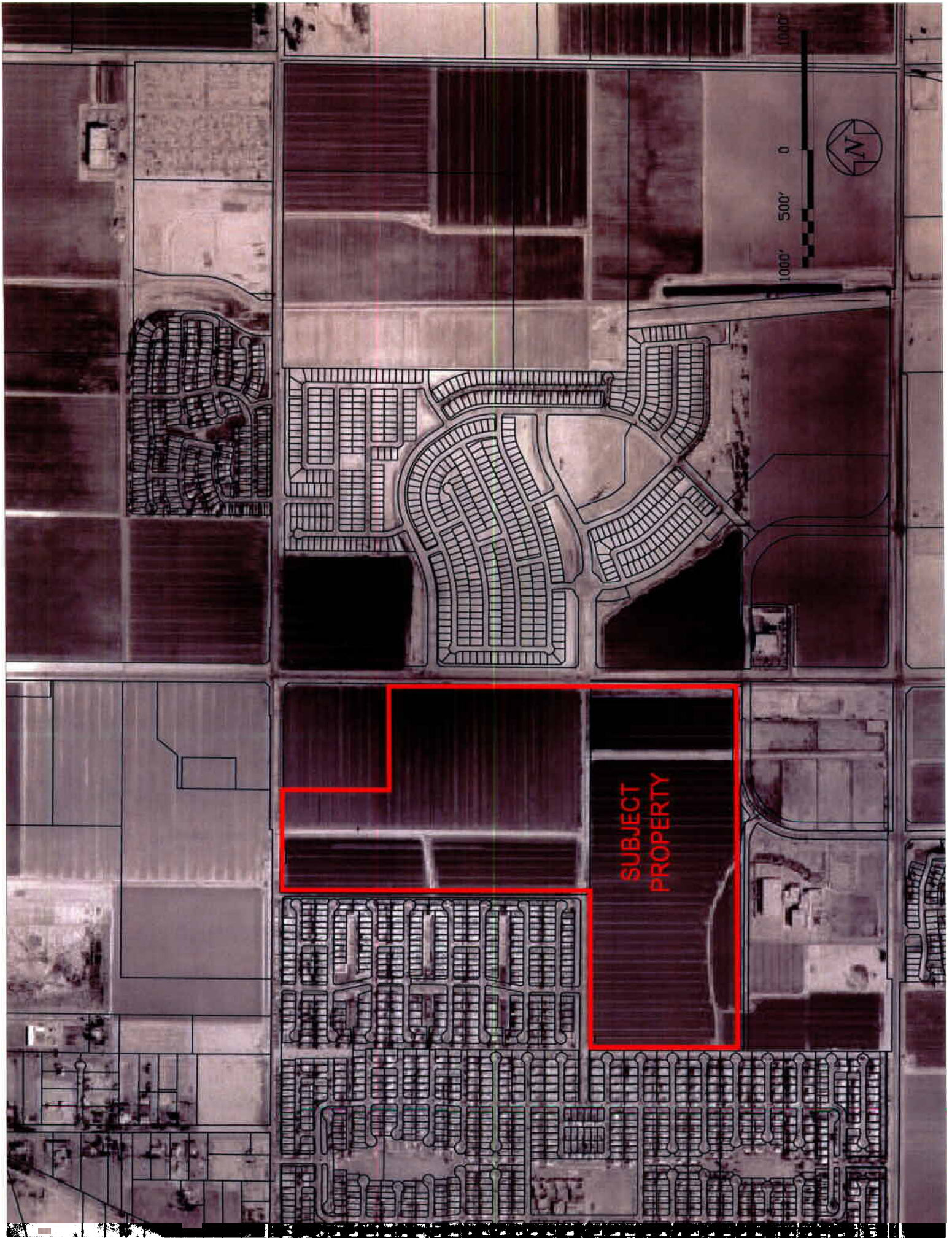


Harvey Krauss – Community Development Director

PREPARED BY:



Planning Manager



PURCHASE AGREEMENT

DATE: January 13, 2004

PARTIES: LULA MAE D. HUDSON, Trustee of the
Residuary Trust under the Will of E.W. Hudson,
Jr. dated March 30, 1966
("Seller")

CITY OF GOODYEAR
An Arizona Municipal Corporation
190 North Litchfield Road
P.O. Box 5100
Goodyear, Arizona 85338
(602) 932-3005
("Buyer")

Chicago Title Insurance Company
1201 South Alma School Road
Suite 6550
Mesa, Arizona 85210
Attention: Alan Costley
(480) 969-3645
Escrow No. _____
("Escrow Agent")

PROPERTY: The Property is approximately 100 acres gross, located west of Estrella Parkway and south of Van Buren Street in Goodyear, Maricopa County, Arizona, as cross-hatched on Exhibit A attached hereto and incorporated herein by this reference (the "Property"). As soon as a survey and legal description are obtained for the Property and agreed to in writing by both parties, such legal description shall be attached as Exhibit A in place of the Exhibit A presently attached hereto.

1. AGREEMENT OF THE PARTIES

In consideration of the mutual promises and covenants set forth in this Agreement, Seller agrees to sell and Buyer agrees to buy the Property on the terms and conditions set forth in this Purchase Agreement (the "Agreement").

2. SALES PRICE AND PAYMENT TERMS

2.1. Sales Price. The total sales price which Buyer agrees to pay for the Property is Four Million Five Hundred Thousand Dollars (\$4,500,000). The total sales price will be increased or decreased at Close of Escrow to equal Forty-Five Thousand Dollars (\$45,000) multiplied by the total gross acreage of the Property as determined by the survey. Such purchase price shall be payable in full by Buyer to Escrow Agent, to be deposited in escrow on or before the close of escrow unless Buyer elects to cancel this Agreement as provided herein.

2.2. Disbursements. Upon the close of escrow, the amounts paid by Buyer according to Section 2.1 of this Agreement shall be disbursed to Seller.

3. TITLE, SURVEY AND ENVIRONMENTAL MATTERS

3.1. Survey. As soon as reasonably possible (but in any event not later than thirty (30) days from the Opening Date) following the Opening Date (as defined in Section 4.2(a) below), the Property shall be surveyed by an Arizona registered land surveyor satisfactory to Buyer. The survey (the "Survey") shall be an ALTA survey in form acceptable to Buyer and to Escrow Agent in order to issue the title insurance policies required by Section 3.6 below and shall show all easements, encroachments and other matters affecting the Property including the matters disclosed as title exceptions in the Report furnished as required by Section 3.2 of this Agreement and shall show the number of gross square acres constituting the Property. The Survey shall be certified to be accurate, complete and correct to Buyer. The cost of the Survey shall be paid by Buyer.

3.2. Preliminary Title Report. Promptly following the Opening Date, Escrow Agent shall deliver a current commitment for title insurance (the "Report") issued by Escrow Agent on the Property to Buyer and Seller. The Report shall show the status of title to the Property as of the date of the Report and shall be accompanied by legible copies of all documents referred to in the Report.

3.3. Environmental Report. As soon as reasonably possible following the Opening Date, Buyer will have conducted a Phase I environmental audit of the Property (the "Phase I Report"). The cost of the Phase I Report shall be paid by Buyer. Seller shall have no obligation to remediate any environmental contamination. If Buyer is not satisfied with the Environmental Phase I Report, Buyer shall have the cancellation rights as provided in Sections 3.4 and 8 herein.

3.4. Review Period.

(a) Buyer shall have until February 13, 2004 or such lesser time as may be elected by Buyer in its sole discretion (the "Review Period") to approve or disapprove any Survey matters, the status of title as shown by the Report and the Survey and the condition of the Property described in the Phase I Report. If Escrow Agent issues a supplemental or amended title report showing additional exceptions to

title (an "Amended Report"), Buyer shall have a period of time equal to ten days or such lesser time as may be elected by Buyer in its sole discretion (a "Supplemental Review Period") from the date of receipt of the Amended Report and a copy of each document referred to in the Amended Report in which to give notice of dissatisfaction as to any additional exceptions. If Buyer is dissatisfied with any matter shown on the Survey or with any exception to title as shown in the Report or an Amended Report or with any matter disclosed in the Phase I Report, then, at Buyer's sole option, Buyer may; (i) provide written notice to Seller of Buyer's election to take an additional fifteen (15) days to resolve any problem or condition identified by Buyer; (ii) cancel this Agreement by giving notice of cancellation to Seller and Escrow Agent within the Review Period, or Supplemental Review Period, as appropriate, or (iii) Buyer may waive such objections and the transaction shall close as scheduled;

(b) Notwithstanding anything herein contained to the contrary, it is understood and agreed that title to the Property shall be delivered to Buyer at the close of escrow free and clear of all monetary liens and encumbrances;

(c) Upon a cancellation in accordance with the provisions of this Section 3.4, all documents deposited in escrow by Buyer shall be returned to Buyer, all documents deposited in escrow by Seller shall be returned to Seller, and this Agreement shall terminate, whereupon the parties shall have no further liability hereunder.

3.5. Deed. At the close of escrow, Seller shall convey title to the Property to Buyer by special warranty deed, in form and substance satisfactory to Buyer and Seller.

3.6. Title Policy.

(a) Title Policy shall be evidenced by the issuance by Chicago Title Insurance Company in its capacity as title insurer of its Extended Owner's Coverage Policy of Title Insurance in the amount of the Purchase Price, showing title to the Property vested in Buyer.

(b) The obligations of Seller to provide the title policy called for in this Section shall be satisfied if, at the close of escrow, Title Company has issued a binding commitment to issue the policy in the form required by this Section and if such policy is delivered within a reasonable time following the close of escrow.

4. ESCROW; CLOSING; AND PRORATIONS

4.1. Escrow. An escrow for this transaction shall be established with Escrow Agent, and Escrow Agent is hereby employed to handle the escrow. This Agreement constitutes escrow instructions to the Escrow Agent and a copy shall be deposited with Escrow Agent for this purpose. Should Escrow Agent require the execution of its standard form printed escrow instructions, Buyer and Seller agree to execute same; however, such instructions shall be construed as applying only to

Escrow Agent's employment, and if there are conflicts between the terms of this Agreement and the terms of the printed escrow instructions, the terms of this Agreement shall control.

4.2. Opening and Closing Dates.

(a) Escrow shall be deemed open on the date (the "Opening Date") when one fully executed original of this Agreement has been delivered to Escrow Agent. Escrow Agent shall advise Buyer and Seller in writing of the Opening Date;

(b) The closing of this transaction and escrow (referred to in this Agreement as the "closing" or the "close of escrow") shall occur on a date selected by Buyer upon five (5) days written notification from Buyer to Seller after February 16, 2004 and in no event later than February 27, 2004.

4.3. Closing Costs.

(a) At the close of escrow, Buyer agrees to pay all of the escrow charges, including, but not limited, to Title Insurance premium.

(b) On or before the close of escrow, Buyer agrees to deposit with Escrow Agent funds sufficient to pay the Purchase Price plus all closing costs payable by Buyer.

4.4. Form 1099-B. Upon the close of escrow, Escrow Agent is hereby authorized and instructed to file with the U.S. Internal Revenue Service Form 1099-B, Proceeds From Real Estate, Broker, and Barter Exchange Transactions, as required by Section 6045(e)(2)(A) of the Internal Revenue Code of 1986, as amended.

4.5. Certification as to "Nonforeign" Status. At the closing, Seller shall deliver or ~~cause to be delivered to Buyer~~, at Seller's sole cost and expense, a certification in the form attached hereto as Exhibit B.

5. MATTERS RELATING TO THE ESCROW PERIOD

5.1. Possession. Possession of the Property shall be delivered to Buyer upon the close of escrow. From time to time prior to the close of escrow, Buyer may enter upon the Property with Buyer's representatives and agents for the purpose of examining the Property, conducting soil tests and engineering feasibility studies, and planning the proposed development of the Property. Buyer agrees to indemnify Seller and hold Seller harmless from any injury, cost, liability or expense to person or property arising out of Buyer's exercise of the rights granted by this Section 5.1 (unless resulting from Seller's negligence) and this indemnity shall survive the close of escrow or the cancellation of this Agreement.

5.2. Risk of Loss. Except as provided in Section 5.1 of this Agreement, the risk of loss or damage to the Property and all liability to third persons until the close of escrow shall be borne by Seller.

6. REPRESENTATIONS AND WARRANTIES

6.1. Seller's Representations and Warranties. Seller makes the following representations and warranties which shall apply to the Property, which are agreed to constitute a material part of the consideration hereunder, which are true and accurate as of the Opening Date, will be true and accurate as of the close of escrow, and which shall survive the close of escrow:

(a) Action. All actions on the part of Seller which are required for the execution, delivery and performance by Seller of this Agreement and each of the documents and agreements to be delivered by Seller at the closing have been duly and effectively taken;

(b) Enforceable Nature of Agreement. This Agreement and each of the documents and agreements to be delivered by Seller at the closing, constitutes a legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms;

(c) Violations; Consents; Defaults. Neither the execution of this Agreement nor the performance hereof by Seller will result in any breach or violation of the terms of any law, rule, ordinance, or regulation or of any decree, judgment or order to which Seller is a party now in effect from any court or governmental body. There are no consents, waivers, authorizations or approvals from any third party necessary to be obtained by Seller in order to carry out the transactions contemplated by this Agreement. The execution and delivery of this Agreement and performance hereof by Seller will not conflict with, or result in a breach of, any of the terms, conditions or provisions of, or constitute a default under or result in the creation of any new, or the acceleration of any existing, lien, charge, or encumbrance upon the Property, or any indenture, mortgage, lease, agreement, or other instrument to which Seller is a party or by which Seller or any of its assets may be bound;

(d) Litigation. Seller is not a party to any pending or threatened action, suit, proceeding or investigation, at law or in equity or otherwise, in, for or by any court or governmental board, commission, agency, department or officer arising from or relating to the Property or to the past or present operations and activities of Seller upon or relating to the Property;

(e) Leases and Agreements. There are no unrecorded leases, arrangements, agreements, understandings, options, contracts, or rights of first refusal affecting or relating to the Property in any way other than the year to year farm lease, attached hereto as Exhibit "C";

(f) Environmental Matters. To Seller's actual knowledge, neither Seller nor the Property is in material violation of applicable environmental law, regulation, ordinance or order of any government entity, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, the Resource Conservation and Recovery Act, as amended, the Federal Clean Water Act, as amended, the Federal Clean Air Act, as amended, the Federal Toxic Substances Control Act, as amended, and any regulations promulgated thereunder, or any other federal, state or local laws relating to contamination of or adverse effects on the environment ("Environmental Laws"), and neither the Property nor any underlying groundwater contains any material concentrations of regulated substances, hazardous substances, hazardous materials, toxic substances, or similar substances, residues, and waste.

(g) Accuracy of Information. To Seller's actual knowledge, the information furnished by Seller to Buyer in accordance with the provisions of this Agreement is true, complete and accurate; and

6.2. Buyer's Representations and Warranties. Buyer makes the following representations and warranties which are agreed to constitute a material part of the consideration hereunder, which are true and accurate as of the date of this Agreement, and will be true and accurate as of the close of escrow, and which shall survive the close of escrow:

(a) Authority. Buyer has full power and authority to enter into and to perform its obligations under this Agreement. The persons executing this Agreement on behalf of Buyer have full power and authority to do so and to perform every act and to execute and deliver every document and instrument necessary or appropriate to consummate the transactions contemplated hereby; and

(b) Enforceable Nature of Agreement. This Agreement and each of the documents and agreements to be delivered by Buyer at the closing, constitutes a legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms.

(c) Lights. Buyer agrees to minimize the impact of light trespass onto the Seller's adjoining land by engaging the services of DH Lighting Solutions or other qualified lighting engineers to design and review lighting concepts for the property, including, but not limited to ball field lighting.

7. BROKERAGE

Buyer and Seller each warrant that it has not dealt with any broker in connection with this transaction. Each party shall indemnify and hold the other harmless for, from and against any and all brokerage commissions in connection with this transaction resulting from the indemnifying party's actions. This indemnity shall survive the close of escrow or the cancellation of this Agreement.

8. CANCELLATION RIGHTS

Prior to the expiration of the Review Period or any Supplemental Review Period, Buyer shall have the absolute right to cancel this Agreement for any reason whatsoever, in Buyer's sole and absolute discretion; provided, however, that until Buyer so cancels, Buyer shall proceed in good faith to carry out Buyer's preliminary investigatory steps with respect to this transaction. Unless Buyer gives written notice of cancellation prior to the expiration of the above-described time period, then Buyer shall be deemed to have elected not to cancel the Agreement under this provision.

9. ADDITIONAL CONTINGENCIES

9.1 City Council Approval. Buyer and Seller acknowledge and agree that all obligations of Buyer hereunder are contingent upon approval of this Agreement by the Goodyear City Council on or before the expiration of the Review Period.

10. CLOSING DOCUMENTS

10.1. Seller's Closing Documents. On or before the close of escrow, Seller shall deposit into escrow the following documents for delivery to Buyer at the close of escrow, each of which shall have been duly executed and, where appropriate, acknowledged, and shall be in form and substance reasonably satisfactory to Buyer;

(a) The Deed in the form required by Section 3.5 of this Agreement;

(b) An Affidavit of Value if required by law; and

(c) Such other documents as may be necessary or appropriate to transfer and convey all of the Property to Buyer and to otherwise consummate this transaction in accordance with the terms of this Agreement.

10.2. Buyer's Closing Documents. On or before the close of escrow, Buyer shall deposit into escrow the following documents for delivery to Seller at the close of escrow, each of which shall have been duly executed and, where appropriate, acknowledged and shall be in form and substance satisfactory to Seller:

(a) An Affidavit of Value if required by law;

(b) Such other documents as may be necessary or appropriate to consummate this transaction in accordance with the terms of this Agreement; and

(c) Sufficient funds to pay the Purchase Price and Closing Costs in full at Close of Escrow.

11. REMEDIES

11.1. Seller's Remedies. If Buyer fails to deposit the sales price in the time and manner set forth in this Agreement or to perform when due any other act required by this Agreement, then Seller's sole and exclusive remedy shall be to cancel this Agreement and the escrow, without further liability hereunder, such cancellation to be effective immediately upon Seller giving written notice of cancellation to Buyer and Escrow Agent.

11.2. Buyer's Remedies. If Seller fails to perform when due any act required by this Agreement to be performed, then Buyer, as its sole and exclusive remedy, may either cancel this Agreement and the escrow, without further liability hereunder, such cancellation to be effective immediately upon Buyer giving written notice of cancellation to Seller and Escrow Agent, or enforce this Agreement through a suit for specific performance.

12. ACQUISITION IN LIEU OF CONDEMNATION

The Buyer desires to acquire the Property for use as a City/Public Park and for other governmental purposes and in lieu of condemnation, Buyer proposes to purchase the Property at the negotiated price and upon the terms and conditions provided in this Agreement.

13. GENERAL PROVISIONS

13.1. Binding Effect. The provisions of this Agreement are binding upon and shall inure to the benefit of the parties and their respective heirs, personal representatives, successors and assigns.

13.2. Attorneys' Fees. If any action is brought by either party in respect to its rights under this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and court costs as determined by the court.

13.3. Waivers. No waiver of any of the provisions of this Agreement shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver be a continuing waiver. Except as expressly provided in this Agreement, no waiver shall be binding unless executed in writing by the party making the waiver. Either party may waive any provision of this Agreement intended for its benefit; provided, however, such waiver shall in no way excuse the other party from the performance of any of its other obligations under this Agreement.

13.4. Construction. This Agreement shall be construed according to the internal law of Arizona without the application of any principles of conflicts of law that would require or permit the application of the laws of any other jurisdiction.

13.5. Time. Time is of the essence of this Agreement.

13.6. Notices. Notices shall be in writing and shall be given by personal delivery, by deposit in the United States mail, certified mail, return receipt requested, postage prepaid, or by express delivery service, freight prepaid, in each case by delivery to Seller and Buyer at the addresses set forth on the first page of this Agreement or at such other address as a party may designate in writing. The date notice is given shall be the date on which the notice is delivered, if notice is given by personal delivery, or the date of deposit in the mail or with an express delivery service, if the notice is sent through the United States mail or by express delivery service. Notice shall be deemed to have been received on the date on which the notice is delivered, if notice is given by personal delivery, one business day following such deposit with the express delivery service if notice is sent by express delivery service or three days following such deposit in the mail if notice is sent through the United States mail. A copy of any notice given to a party shall also be given to Escrow Agent by regular mail;

13.7. Further Documentation. Each party agrees in good faith to execute such further or additional documents as may be necessary or appropriate to fully carry out the intent and purpose of this Agreement.

13.8. Time Periods. Except as expressly provided for herein, the time for performance of any obligation or taking any action under this Agreement shall be deemed to expire at 5:00 p.m. (Phoenix time) on the last day of the applicable time period provided for herein. If the time for the performance of any obligation or taking any action under this Agreement expires on a Saturday, Sunday or legal holiday, the time for performance or taking such action shall be extended to the next succeeding day which is not a Saturday, Sunday or legal holiday.

13.9. Headings and Counterparts. The headings of this Agreement are for purposes of reference only and shall not limit or define the meaning of any provision of this Agreement. This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which shall constitute one and the same instrument.

13.10. Acceptance. This Agreement shall be of no force and effect unless Buyer shall have executed and delivered a fully executed original to Escrow Agent on or before 5 o'clock p.m. (Phoenix time), on January 28, 2004.

13.11. Cancellation. Buyer gives notice to Seller that A.R.S. § 38-511 provides that Buyer may, within three years after its execution, cancel any contract without penalty or further obligation made by Buyer if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of Buyer is at any time while the contract or any extension of the contract is in effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other party to the contract with respect to the subject matter of the contract.

13.12. Entire Agreement. This Agreement, together with Exhibits A through C constitutes the entire agreement between the parties pertaining to the subject matter contained in this Agreement. All prior and contemporaneous agreements,

representations and understandings of the parties, oral or written, are superseded by and merged in this Agreement. No supplement, modification or amendment of this Agreement shall be binding unless in writing and executed by Buyer and Seller.

In witness whereof, the parties hereto have executed this Purchase Agreement as of the date first above written.



Lula Mae D. Hudson, as Trustee of the
Residuary Trust under the Will of E.W.
Hudson, Jr., dated March 30, 1966

[Seller]

CITY OF GOODYEAR
An Arizona Municipal Corporation

By _____

Its _____

[Buyer]

Escrow Agent hereby accepts employment to handle the
escrow created by this Agreement in accordance with the
terms set forth in this Agreement and establishes the
Opening Date as ____, 2004.

CHICAGO TITLE INSURANCE COMPANY

By _____

Its _____

EXHIBIT A

[LEGAL DESCRIPTION]

EXHIBIT B

NONFOREIGN PERSON AFFIDAVIT

THIS AFFIDAVIT is made this ____ day of _____, _____, by _____ (the "Transferor"), for the benefit of _____ ("Transferee").

Section 1445(a) of the Internal Revenue Service Code of 1986 (hereinafter referred to as the "Code") provides that a transferee of a United States real property interest must withhold tax if the transferor is a foreign person. To inform the Transferee that withholding tax is not required upon the disposition by Transferor of an interest in the Property described on Exhibit "A" hereto, the undersigned hereby certifies the following on behalf of Transferor:

1. Transferor is not a foreign corporation, foreign partnership, foreign trust, foreign estate or foreign person (as those terms are defined in the Code and Income Tax Regulations);

2. Transferor's U.S. Employer Identification Number or Social Security Number, as applicable, is _____; and

3. Transferor's address is _____.

Transferor understands that this certification may be disclosed to the Internal Revenue Service by the Transferee and that any false statement contained herein could be punished by fine, imprisonment or both.

Under penalties of perjury, the undersigned declares that he has examined this certification and, to the best of his knowledge and belief, it is true, correct and complete, and the undersigned further declares that he has all authority to sign on behalf of Transferor.

By

Its _____

EXHIBIT C

[FARM LEASE]

The written Farm Lease has expired and Tenant farms the Property based on a verbal agreement with Seller.